



# Focus on **OPINIONS REGARDING INDEPENDENT REMEDIAL ACTIONS**

from Ecology's Toxics Cleanup Program

For more  
information on:

- **Voluntary Cleanup Program**
- **Opinions on Independent Remedial Actions**

Visit the  
following  
web site:

[www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm](http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm)

or

**Contact:**

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## **What are independent remedial actions?**

"Remedial actions" are actions that are conducted under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, to characterize and address the contamination at a hazardous waste site (site).

"Independent remedial actions" are remedial actions that are conducted without Ecology oversight or approval and not under an order, agreed order or consent decree.

## **Does Ecology provide advice and assistance to persons who conduct independent remedial actions?**

Yes. Ecology does provide informal advice and assistance (technical consultations) to persons who conduct independent remedial actions. Those consultations are available under the Voluntary Cleanup Program (VCP).

## **What types of advice and assistance will Ecology provide under the Voluntary Cleanup Program?**

Under the VCP, Ecology **will provide** informal advice and assistance on the administrative and technical requirements of MTCA. Ecology will, for example, assist clients in identifying applicable regulatory requirements and applying those requirements at a hazardous waste site. Ecology will also conduct reviews of remedial actions that clients have proposed or conducted at a site and provide an opinion on whether those remedial actions meet the applicable regulatory requirements. Ecology may provide those opinions in writing.

Ecology **will not provide** advice or assistance in making any of the following determinations:

- Ownership,
- Liability,
- Financial responsibility,
- Allocation of financial responsibility among liable persons, or
- Substantial equivalence (i.e., whether independent remedial actions are the substantial equivalent of Ecology-conducted or Ecology-supervised actions).

Please note that all technical consultations under the VCP, whether verbal or written, are **advisory only and not binding on Ecology**.



## What types of written opinions will Ecology provide under the VCP?

Under the VCP, Ecology will provide clients written opinions on any proposed or completed independent remedial action at a hazardous waste site, including:

- Remedial investigations,
- Feasibility studies,
- Interim actions, and
- Cleanup actions.

Those opinions shall be limited to:

- Whether the proposed or completed independent remedial actions at the site meet the substantive requirements of MTCA, **and/or**
- Whether further remedial action is necessary at the site under MTCA to characterize and address all of the contamination at the site.

Ecology has developed several boilerplate opinion letters to provide more clear and consistent written opinions under the VCP. The type of boilerplate opinion that Ecology will provide a client is dependent on:

- The type of remedial action (e.g., interim action or cleanup action); and
- Whether the remedial action is proposed or completed.

Please note that the opinions that Ecology provides clients under the VCP are based solely on the information submitted to Ecology and that the opinions are advisory only and not binding on Ecology.

## What types of boilerplate opinion letters has Ecology developed and what is the appropriate use of each of those letters?

Ecology has developed six boilerplate opinion letters to provide more clear and consistent opinions on interim and cleanup actions proposed for or performed at a hazardous waste site. As noted above, the boilerplate opinion letter that Ecology will use is dependent on whether the remedial action is an interim action or a cleanup action and whether the remedial action is proposed or completed. The following table summarizes the types of opinion letters and illustrates when each of those letters will be used by Ecology.

	Proposed	Completed
Interim Action	(1) Opinion on Proposed Remedial Action	(2) Opinion on Remedial Action
Cleanup Action	(3) Opinion on Proposed Cleanup Action	(4) No Further Action Partial Sufficiency & Further Action Further Action

The following discussion provides an overview of when each of the boilerplate opinion letters will be used by Ecology and the content of each of those opinions.

*If you need this publication in an alternate format, please contact the Toxics Cleanup Program at (360) 407-7170. For persons with a speech or hearing impairment, call 711 for relay service or 800-833-6388 for TTY.*

**(1) Opinions on Proposed Interim Actions**

If the client submits a proposed interim action to Ecology for review under the VCP, then Ecology will use the **boilerplate “Opinion on Proposed Remedial Action.”**

The letter <b>will provide</b> an opinion on:	The letter <b>will not provide</b> an opinion on:
<ul style="list-style-type: none"><li>Whether the proposed interim action <u>is likely to be sufficient</u> to meet the substantive requirements of MTCA for characterizing and addressing <u>specified, but not all, contamination</u> at the site.</li></ul>	<ul style="list-style-type: none"><li>Whether the proposed interim action <u>will actually be sufficient</u> to characterize and address the specified contamination at the site;</li><li>Whether further remedial action will be necessary to characterize and address all of the contamination at the site upon completion of the proposed interim action; or</li><li>The sufficiency of any other remedial action proposed for or conducted at the site.</li></ul>

**(2) Opinions on Completed Interim Actions**

If the client submits a report on a completed independent interim action to Ecology for review under the VCP, then Ecology will use the **boilerplate “Opinion on Remedial Action.”**

The letter <b>will provide</b> an opinion on:	The letter <b>will not provide</b> an opinion on:
<ul style="list-style-type: none"><li>Whether the completed interim action <u>is sufficient</u> to meet the substantive requirements of MTCA for characterizing and addressing <u>specified, but not all, contamination</u> at the site.</li></ul>	<ul style="list-style-type: none"><li>Whether further remedial action is necessary to characterize and address all of the contamination at the site; or</li><li>The sufficiency of any other remedial action proposed for or conducted at the site.</li></ul>

**(3) Opinions on Proposed Cleanup Actions**

If the client submits a proposed cleanup action to Ecology for review under the VCP, then Ecology will use the **boilerplate “Opinion on Proposed Cleanup Action.”**

The letter <b>will provide</b> an opinion on:	The letter <b>will not provide</b> an opinion on:
<ul style="list-style-type: none"><li>Whether the proposed cleanup action <u>is likely to be sufficient</u> to meet the substantive requirements of MTCA for characterizing and addressing <u>all of the contamination</u> at the site.</li></ul>	<ul style="list-style-type: none"><li>Whether the proposed cleanup action <u>will actually be sufficient</u> to characterize and address all of the contamination at the site.</li></ul>

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#### (4) **Opinions on Completed Cleanup Actions**

If the client submits a report on a completed cleanup action to Ecology for review under the VCP, then Ecology will use one of three different boilerplate opinion letters. The letter that will be used is dependent on whether the completed cleanup action is sufficient to meet the substantive requirements of MTCA for characterizing and addressing all of the contamination at the site.

##### (a) **No Further Action determination**

If Ecology determines that the independent remedial action(s) conducted at the site **are sufficient** to meet the substantive requirements of MTCA for characterizing and addressing **all of the contamination** at the site, then Ecology will provide the client with a no further action determination.

##### (b) **Partial Sufficiency and Further Action determination**

If Ecology determines that the independent remedial action(s) conducted at the site **are sufficient** to meet the substantive requirements of MTCA for characterizing and addressing **some, but not all, of the contamination** at the site, then Ecology will provide the client with a partial sufficiency and further action determination.

##### (c) **Further Action determination**

If Ecology determines that the independent remedial action(s) conducted at the site **are not sufficient** to meet the substantive requirements of MTCA for characterizing and addressing **any of the contamination** at the site, then Ecology will provide the client with a further action determination.

### **Are the boilerplate opinion letters that Ecology has developed different than before?**

Yes. Ecology has recently modified the type of written opinions it provides under the VCP to ensure that its opinions are consistent with its statutory authority.

In particular, the “**partial sufficiency and further action**” opinion letter described above **takes the place of**, and is functionally equivalent to, the “**interim**” or “**conditional**” **no further action** opinion letters previously issued by Ecology. This opinion letter changes certain terminology to more closely reflect the requirements of MTCA and its implementing regulations. Ecology has also revised the language in each of the boilerplate opinion letters to improve the clarity and transparency of the opinions.

### **Does a written opinion resolve a person’s liability to the state under MTCA or protect a liable person from contribution claims by third parties for matters addressed by the opinion?**

No. The written opinion does not resolve a person’s liability to the state under MTCA or protect a liable person from contribution claims by third parties for matters addressed by the opinion. The opinion is advisory only and not binding on Ecology. The state does not have the authority to settle with any person potentially liable under MTCA except in accordance with RCW 70.105D.040(4).